IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
GLUTARIC

CIVIL REVISION APPLICATION No 1392 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

GUJARAT FLUOROCHEMICALS LTD.

Versus

RANJITNAGAR GRAM PANCHAYAT

Appearance:

K.S.NANAVATI FOR NANAVATI ASSOCIATES for Petitioner

M.B.GANDHI WITH MR HR LATHIGARA for Respondent No. 1

ARUN H MEHTA FOR RESPONDENT NO.2.

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 21/09/96

ORAL JUDGEMENT

What should be the approach of the court in passing interim or interlocutory order in matters where imposition and recovery of tax ,octroi,cess or revenue is questioned by a party ? Can the court be oblivious of the social-economic consequences of its orders ? How and by taking into consideration which factors, the question

as to prima facie CASE ,balance of convenience and irretrievable harm ought to be decided ?

The petitioner company is engaged in the business of manufacture of refrigeration gas and for the said purpose has its factory premises on Survey No. 16\3,26and 27 within the revenue limits of Respondent No.1 Ranjitnagar Gram Panchayat. The petitioner company instituted a legal battle by filing Regular Civil Suit No. 84 of 1996 in the court of the learned Civil Judge (Junior Division),Devgadh Baria on 12.8.1996 seeking perpetual injunction restraining the Respondent Panchayat from recovering octroi from the petitioner company on the following main two grounds:

(1) that the petitioner company is not within the panchayat limit and area and territorial jurisdiction of the Respondent panchayat and,therefore,the company is not liable to pay any octroi duty .

(2) that the action of the Respondent panchayat of seeking to recover octroi duty from the petitioner company was without following the mandatory procedures as prescribed under Rules 3 and 4 of the Gujarat Gram and Nagar Panchayat (Taxes and Fees) Rules,1964 ('1964 Rules').

The Trial Court by its order dated 12.8.1996 granted ex-parte (ad-interim) injunction restraining the Respondent panchayat,its officers and servants from recovering octroi duty from the petitioner company in respect of the goods brought by the petitioner company in its factory premises finding that injury would be caused to the petitioner company if the injunction as prayed for was not granted.

The Respondent Panchayat questioned the order of ad=interim ex-parte injunction by filing Misc.Civil Appeal No. 104 of 1996 in the District Court,Panchmahals at Godhra under Order 43,Rule 1(r) of the Code of Civil Procedure,1908 ('the Code') which came be allowed on 23.8.1996. Thus, the order of the Trial Court granting ex-parte ad-interim injunction against the Respondent Panchayat from levying and recovering octroi .,dated 12.8.1996 came to be quashed while allowing the appeal filed by the Panchayat.Hence,this revision under Section 115 of the Code at the instance of the petitioner company,original plaintiff.

Learned counsel Mr. K.S.Nanavati while appearing for the

petitioner company has vehemently contended that the impugned judgment of the Appellate Court in allowing the appeal and thereby setting aside the order of the Trial court granting ex-parte (ad-interim) injunction against the Respondent Panchayat is perverse, unjust and illegal. He has also contended that the action of the Respondent Panchayat of passing a resolution to levy octroi was in gross breach of mandatory statutory provisions and procedure as prescribed in Rules 3 and 4 of the 1964 Rules. He also submitted that premises of the petitioner company are outside the territorial limit of the panchayat area. Thus, it was the forcefully argued that the petitioner company is outside the jurisdiction and octroiable limit of the Respondent panchayat and,therefore,the action of the Respondent panchayat was null and void.In the circumstances, it was submitted that the Trial court rightly granted the ad-interim ex-parte injunction which was wrongly set aside by the District Court.

The aforesaid submissions are traversed and controverted by the learned advocate Mr. M.B.Gandhi for Respondent Panchayat and Mr. Arun H.Mehta for Respondent No.2. They have vehemently contended that the impugned judgment of the District Court is fully justified and requires no interference in a limited jurisdictional sweep of revision under Section 115 of the Code.

It was repeatedly suggested during the course of marathon hearing in this court that since the Trial court has yet to decide the merits of the interlocutory injunction application,Ex.5 after hearing all the parties and a reply is also filed by the Respondent panchayat,it would be expedient to get hearing of the said interlocutory injunction application Ex.5 expedited,so as to save time and avoid decision on submissions in this petition. However,the same was not even acceptable to the petitioner company, as a result of which, this court is left with no alternative but to deal with all points and submissions raised during the course of marathon submissions in this revision.

The Trial court granted ex-parte injunction restraining the Respondent panchayat from recovering octroi duty till 19.8.1996 by exercising powers under Order 39.,Rule 3 in application below Ex.5 which was under Order 9, rules 1 and 2. Order 39,Rule 1 provide for powers of the court in cases in which temporary injunction may be granted. Order 39,Rule 2 provides for powers of court to grant injunction to restrain repetition or continuance of breach. Order 39,rule 2A provides for consequences of

disobedience or breach of injunction. Rule 3 of Order 39 provides that before granting injunction, the court ought to direct notice to the opposite party except as provided in the proviso. Order 39,Rule 3 is very important and relevant . It reads as under :

"3. The court shall in all cases,except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party:

Provided that ,where it is proposed to grant an injunction without giving notice of the application to the opposite party, the court shall record the reasons for its opinion that the object of granting the injunction would be defeated by delay,and require the applicant-

(a) to deliver to the opposite party,or to send to him by registered post,immediately after the order granting the injunction has been made,a copy of the application for injunction together with-

(i) a copy of the affidavit filed in support ofthe application;

(ii) a copy of the plaint, and

(iii) copies of documents on which the applicant relies,and

(b) to file, on the day on which such injunction is granted or on the day immediately following that day,an affidavit stating that the copies aforesaid have been so delivered or sent."

It appears from the ex-parte interim injunction order of the Trial court that while exercising powers under Rule 3 of Order 39, it has assumed-

(i) that exercise of statutory power by the public authority like that- the Respondent panchayat- is not legal and valid;

(ii) that the factory premises of the petitioner company are not within the octroiable limit or

territorial area of the Respondent panchayat.

(iii) that irreparable harm will be caused in permitting the Respondent panchayat to recover octroi for a short time till the other side is served with notice of hearing.

(iv) that balance of convenience is in favour of the petitioner company for granting of ex-parte injunction which otherwise would be defeated if notice is issued and the panchayat is heard.

It could prima facie be concluded that the Trial court should not have granted the ex-parte interlocutory injunction restraining the Respondent panchayat from recovering octroi duty from the petitioner company which was in purported exercise of statutory function merely on on the aforesaid assumption and without appreciating the underlying purport and design of the provisions of Order 39,Rule 3 and latest proposition of law on the point. Therefore, the impugned judgment of the District court reversing the said order of the Trial court cannot be said to be unjust,perverse or illegal requiring interference of this court in a revision under Section 115 of the Code wherein the ambit and scope of jurisdiction is very much circumscribed.

The apex court had an occasion to consider the question of interim relief being granted against public authorities in the case of Assistant Collector.C.E.Chandan Nagar vs. Dunlop India Ltd.,AIR 1985 SC 330, wherein, it has been observed:

"....But since the law presumes that public authorities function properly and bona fide with due regard to the public interest, a court must be circumspect in granting interim orders of far reaching dimensions or orders causing administrative,burdensome inconvenience or orders preventing collection of public revenue for no better reason than that the parties have come to the court alleging prejudice,inconvenience or harm and that a prima facie case has been shown. There can be and there are no hard and fast rules. But prudence,discretion and circumspection are called for. There are several other vital considerations apart from the existence of a prima facie case.There is the question of balance of convenience. There is the question of irreparable injury.,There is the

question of public interest. There are many such factors worthy of considerations...".

Presumption or assumption about the impugned action of the Respondent-panchayat prima facie raised by the Trial court is contrary to the general presumption of law. Presumption of law is other way round. The law ordinarily presumes that public bodies or statutory authorities function in accordance with law properly.It cannot be presumed at an interlocutory stage without hearing the other side that decision of the Respondent Corporation in levying octroi duty is not in accordance with law.. It is,therefore,necessary to emphasise that the presumption is that action or decision of a public authority or statutory functionary in levying tax.octroi,cess or any other revenue in discharge of statutory function, is prima facie presumed to be in accordance with law,unless otherwise shown.It appears that while passing the ad-interim injunction order,the learned Trial judge failed to appreciate this vital aspect.

It must also be remembered that the functioning of the public authorities or bodies is like an open book. The persons in charge of such public bodies are constantly in the public gaze.They are subjected to open criticisms by the Press as well. Again, they are subjected to the supervision either by the Public Accounts committee or Estimate Committee or higher authority,as in the present case, the District Development officer who is empowered to answer such compliance.Statutory provision is also very clear. An aggrieved party or dissatisfied person can also go to a statutory authority like the District Development officer who is empowered to hear and take appropriate action. The public authorities are again subjected to limitations and restrictions imposed upon them under the relevant statutory provisions. The public bodies do not work for private gain. Interference in the day to day working of the public authorities and much more in the sphere of business world where the financial and administrative consequences are likely to be far reaching should be resorted to as a last resort. in rarest of rare cases. Interference by way of judicial review should be restraining the public authority from recovering revenue in form of tax,cess or octroi,as the case may be and that too at a stage of ex-parte ad-interim injunction ought to be considered an extra ordinary remedy to be used sparingly rather than wielding it lightly just for asking at the request of the aggrieved party like the plaintiff-petitioner or a business company who ,as such,once takes a chance without

incurring any risk whatsoever. This aspect ought to have been examined while passing the ex-parte interim injunction restraining the Respondent panchayat from recovering levy of octroi duty from the petitioner whose share in the earning of octroi is reported to be almost 90%.

It must also be strictly realised that when the taxing authority decides to levy or collect tax or duty like octroi, the authority expresses the common will of the people. In democracy, a person in power has obligation towards the people.When such persons decide to tax the people, a strong presumption would arise that the decision is taken to achieve the objects enshrined in the law or the Constitution as per planned programme. In a Republic democratic set up which is wedded to the doctrine of welfare State,the authority has to perform various socio-economic welfare activities out of such revenue so long as the authority has mandate of the people.Needless to state that moment the taxing authority is prevented from recovering levy of tax or cess or octroi,the mandate given by the people which has been articulated by the Taxing authority by taking decision to levy and recovery tax, is frustrated. Therefore, it cannot be gainsaid that something which is against the basic canons of democracy happens and that too at an interim stage when the validity or otherwise of the impugned action taken by the taxing authority is yet to be resolved and adjudicated upon.

Therefore, while considering prima facie case and balance of convenience, at interlocutory stage, the court is obliged to address itself to the following vital aspects :

1 Why tax is being levied and collected ?
Is the collection of revenue,only to run the administrative machinery of taxing authority or it has some other socio-economic purpose also ? When and how the amount collected by way of tax is required to be spent ? Can the collection and spending thereof be postponed ? If yes, what will be the effect of the same ?

(2) Who bears the burden of tax ? Is it he,who has moved the court to bear the burden of tax, or is it to be borne by the numerous unidentified consumers in the society?

(3) If one who has moved the court is not going to suffer the burden of tax,can he claim that he

> maybe permitted to collect the tax from the people (society) but the society (taxing authority) be restrained from collecting the same amount of tax from him ?

It is also a matter of common understanding that in a welfare State like ours, the amount of tax is collected by the authority not only for the purpose of raising revenue to run the administrative machinery but the taxes are collected mainly with a view to carry out the socio-economic development. The amount so collected out of tax or revenue is required to be spent urgently. Normally in all types of indirect taxes,the burden of tax is not borne by the person who initially pays the tax. The burden is, as such,borne by innumerable unidentifiable members of the society. Generally,a person who moves the court is not likely to suffer the burden of tax alone. It is in this context that once it is recognised that the court is under an obligation to keep in mind the socio-economic needs of the society and the court is bound to be aware of its obligations towards the society that the problem of balancing the social interest and individual interest of a party to the litigation would become very easy to be resolved.

Needless,therefore, to stress that if the aforesaid considerations are clear in mind, then in such matters ordinarily at interim stage and that too at an ad-interim stage, taxing authority should not be restrained from recovering tax or levying octroi. In a situation like one in the present case, ultimately social interest must prevail over the private interest.

It is in these circumstances that the court must cautiously address itself to the vital questions than for private interest. Then why the private interests should prevail with the protection of court's order at the interim stage ? What harm would have been caused if ad-interim injunction would have been granted and order of short notice would have been issued? .The observations of the Trial court that if ad-interim injunction is not granted in favour of the petitioner restraining the Respondent panchayat from recovering octori duty, the petitioner company is likely to suffer injury and,therefore,ad-interim injunction came to be granted are,with due respect, contrary to the celebrated principles of law governing grant of interlocutory injunction and unsupported in light of the facts of the case. If injunction order is not granted at interlocutory stage, there will be no loss or injury to the plaintiff which can be said to be irretrievable. On

the other hand, there will be incalculable loss to the society and irreparable damage may be caused to many such public welfare or public utility activities and projects.

The court should desist from granting interim orders-injunction and stay orders in a mechanical manner as they cause harm to the other side and in some cases to public interest. It is this context,therefore,that the Honourable apex court has rightly observed in D.D.A.vs. Skipper Construction Co.(p) Ltd.(1996) 4 SCC 622, as under :

> "It is no answer to say that 'let us make the order and if the other side is aggrieved,let it come and apply for vacating it'"

It is observed by the Honourable apex court that such is not a correct attitude. Before making the order, the court must be satisfied that it is a case which calls for such an order. This obligation cannot be jettisoned and the onus placed on the respondents/defendants to apply for vacating it.

The principles governing grant of temporary injunction are very well explained and established in catena of judicial pronouncements and,therefore,they do not require any meticulous elaboration.The court cannot ignore undisputable legal position that grant of temporary injunction is always governed by Order 39 Rule 1 and 2. The principles governing grant of temporary injunction are too well settled to require any further elaboration. However, to recapitulate, these are- existence of (i) prima facie case; (ii) balance of convenience in favour of the plaintiff before he can ask for interim injunction and (iii) consideration of balance of convenience necessarily bring into concept of irreparable injury. Needless to add that the very first principle on which interlocutory injunction can be granted is that the court will not grant interlocutory injunction to restrain any wrong for which damage might be the proper remedy. The court is obliged to consider the comparative mischief or inconvenience of both the parties. In order to succeed, the party must establish that inconvenience likely to be caused to him would be greater than which the other side would suffer. This aspect should not have been lost sight of by the learned Trial Judge while passing the ad-interim injunction order below Ex.5 on 12.8.1996.

The powers of court under Order 39,Rules 1 and 2 are

discretionary and equitable. The principles on which exercise of equitable and discretionary powers rest are very well established. They are- (i) in the facts and circumstances of a given case, there ought to exist strong prima facie case for the plaintiff or petitioners's ultimate chance of success. This principle has been explained and expressed by saying that there is a prima facie case.(ii) as injunction is granted during pendency of the suit,the court shall interfere to protect a party upon injuries which are irreparable. Thus, the expression 'irreparable injury' means that it must be material one which cannot be properly compensated in terms of money by way of damages.The injury need not be actual but may be apprehended' (iii) The court is bound to balance and weigh the mischief or inconvenience to either side before issuing or withholding the injunction. This principle is otherwise expressed by saying that the court is to look to the balance of convenience.

It must also be strictly remembered that mere existence of prima facie case is not meant to ipso facto grant of interim injunction. The factors like prima facie case, balance of convenience and irreparable irretrievable harm should co-exist.Even if prima facie case is made out and no balance of convenience is shown,the court cannot grant interlocutory injunction. It must be successfully shown to the satisfaction of the court that all the three factors co-eixst in a case for grant of interlocutory injunction against a party in litigation.

In exercising discretionary power, the court should be guided by the settled and celebrated principles of law of interlocutory injunction. There is no power the exercise of which is more delicate which requires greater caution, deliberation and sound disicretion is more dangerous in a case of levy of revenue or doubtful case,than issuing of an injunction. It is a strong arm of equity that never ought to be extended unless to cases of great injury,where courts of law cannot afford an adequate or commensurate remedy in damages. The right must be clear, the injury impending or threatened,so as to be averted only by the protecting preventive process of injunction. But that will not be awarded in doubtful cases or new ones not coming within well established principles; for if it issues erroneously, an irreparable injury is inflicted for which there can be no redress,it being the act of a court,not of the party who prays for it. It will be refused till the courts are satisfied that the case before them is of a right about to be destroyed,irreparably injured, or great and lasting injury about to be done by an illegal act. It is also

well established that in such a case, the court owes it to its suitors and its own principles to administer the only remedy which the law allows to prevent the commission of such act. The discretionary power must be exercised with extreme caution and applied only in rarest of rare cases to prevent the authority from imposing or recovering tax,cess or revenue. If discretionary powers are not properly exercised ,instead of becoming an instrument to promote the public cause as well as private welfare,it may become a means of extensive and perhaps an irreparable injustice.These principles are very well explained and expounded in many case law.

It would be extremely expedient and appropriate at this juncture to refer to the observations of this court in the judgment rendered in "Anupam Renkdi Cabin Association vs. Jamnagar Municipal Cororation."1995(1) GLH,586,. wherein this court ,after referring similar view of the apex court in the case of Morgan Stanley Mutual Fund vs. Kartick Das,(1994) 4 SCC 225,observed in para 27 thereof as under :

"27. The aforesaid observations were quoted with approval in Morgan Stanley 's case and S.Mohan,J. speaking for the court in MorganStanley's case,summarised the principles for the grant of an ex parte injunction as follows :

'36. A principle ex-parte injunction could be granted only under exceptional circumstances .The factors which should weigh with the court in the grant of ex parte injunction are:

(a) whether irreparable or serious mischief will ensue to the plaintiff.

(b) whether the refusal of ex parte injunction would involve greater injustice than the grant of it would involve;

(c) the court will also consider the time at which the plaintiff first had notice of the act complained so that the making of improper order against a party in his absence is prevented;

(d) the court will consider whether the plaintiff

had acquiesced for some time and in such circumstances it will not grant ex parte injunction;

(e) the court would expect a party applying for ex parte injunction to show utmost good faith in making the application;

(f) even if granted, the ex parte injunction would be for a limited period of time;

(g) general principles like prima facie case,balance of convenience and irreparable loss would also be considered by the court.'

In the case of Assistant Collecotor of Central Excise,West Bengal vs Dunlop India,AIR 1985 SC 330, a caution is sounded by the Honourable Supreme court that ordinarily, the court should not grant injunction against collection of public revenue.This very important principle was not appreciated by the learned Trial Judge while passing the ex-parte injunction order; whereas,the learned Joint District Judge while quashing and setting aside the said order of the Trial court, in appeal, being Misc.Civil Appeal 104 of 1996 under Order 43,Rule 1(r) of the Code,very rightly and correctly had discussed the celebrated principles relating to law of interlocutory injunction.

This court in Municipal Corporation,Rajkot vs. Bhupatlal D.Parekh and others,1996 (2) GLR 1 has made very pertinent observations which are very relevant and appropriate at this state to be mentioned. The same read as under :

"3. While dealing with an application under order 39 Rules 1 and 2 C.P.C various circumstances have to be kept in mind.Not only the question of balance of convenience but other questions like restitution have also to be seen. The effect of the order granting an injunction against the operation of the proposed octroi rules would be that in the event of the suit being dismissed,no recovery would be effected from the tax payers. Injunction has been granted in the present case without imposing any condition on the plaintiffs. Octroi is paid by various persons who bring goods in the city and if the injunction had been refused but the suit had succeeded, it would have been possible for

> the persons paying octroi to get a refund from the municipal authorities.On the other hand, if an injunction is granted,in the manner in which it has been done in the present case and the suit is dismissed, it would be practically impossible to recover the octroi under the rules.While examining an application under order 39,Rules l and 2, the balance of convenience of both the sides has to be kept in mind and in such a case injunction is very rarely,if ever, granted.In my opinion, the lower appellate court erred in allowing the Application,Ex.5 under Order 39,Rules 1 and 2. This Revision application therefore, deserves to be allowed."

The criticism made by the learned advocate for the petitioner with regard to the impugned judgment of the learned Joint District Judge that he should not have interfered with the order of the Trial court granting ex-parte injunction only for a limited period till 19.8.1996 and should have directed the Trial court to hear it expeditiously , is also of no avail to the petitioner company. The learned Joint District Judge has followed the celebrated principles and has rightly interfered with the order of the Trial court granting ex-parte interim injunction against the Respondent panchayat restraining it from recovering octroi duty.

The learned counsel for the petitioner company has also placed reliance on various decisions in support of his contentions . A reference may be made at this juncture:

CASE LAW RELIED ON BY THE PETITIONER:

Firstly, reliance is placed on K.K.Puri vs. A.K.PURI,AIR 1994 J & K,25.It is held in the said case while interpreting provisions of Order 39,Rule 3 of the Code that the the appellate court should look at the reasons in the record even if proper recording of reasons by the court is not made. Where injunction order discloses some reasons proximate to the objects of the rule and it is also apparent that the court is not oblivious of the requirement,it should be deemed a substantial compliance of the requirement.It is further observed in the said case that noncompliance of provisions of Order 39,Rule 3 would not invalidate the ex-parte injunction. Relevant observations are made in paras 17 to 24 of the said judgment..

Reliance is also placed on a decision of the Calcutta High court in Muktakesi Dawn vs. Haripada Mazumdar,AIR

1988 Cal.25 .It is held in the said case that recording of reasons while exercising powers under Order 39,Rule 3 would operate as a check against a too easy granting of ex-pate injunction and may inspire confidence and disarm objection. Secondly,since an appeal lies against such ex-parte order of injunction, such recording of reasons would go a very long way to help the Appellate court to ascertain as to whether the discretion granted under the Rule to grant ex-parte injunction has been properly exercised..But even then, the mandate in the proviso to Rule 3 to record reasons is not that mandatory to warrant reversal of an order solely on the ground of omission to record reasons. If there are materials on record to show that there were good reasons to pass an ex-parte injunction order, the impugned order cannot be set at naught solely on that ground.

Relying on the aforesaid decisions, it has been contended that the Appellate court has committed a serious error in not appreciating the prima facie case and balance of convenience as well as irreparable injury which were taken into account by the Trial court while granting ex-parte injunction. It cannot be said that the Appellate court has recorded the impugned order against interlocutory injunction order of the Trial court merely on that ground. The learned Joint District Judge while deciding the appeal against the said order of the Trial court,has considered various aspects including celebrated principles of law relating to interlocutory injunction. Therefore, the aforesaid two decisions are of no avail to show any invalidity or illegality in the impugned judgment of the learned Joint District Judge.

Next reliance is placed on the decision of this court in Rajkot Municipal Corporation vs. Sonik Industries, 21 GLR 838 .It is contended,relying on the said decision,that publication of proposal for levying tax is mandatory and if the mandatory provisions are substantially complied with,only then,the publication would be proper.Reliance is also placed on the other decisions of (i) Supreme court in AIR 1965 SC 1321 (ii) M.Parekhand Bros. vs. State,AIR 1169 Mysore.167 and (iii) M/s Kasturchand Manilal and company vs. N.B.Patel, V GLT 140. The Division Bench of this court in the aforesaid decisions has held that provisions of Rules 3(b) and 4 of the 1964 Rules are mandatory in nature and if there is any infirmity in the publication of the notice,it would go to the root of the matter and there would be a violation of a mandatory rule. Placing reliance on the said decision, it has been contended that mandatory provisions of Rules 3 and 4 of the 1964 Rules

have not been observed and,therefore, there was prima facie case for grant of interlocutory injunction. The principles laid down in Article 265 of the Constitution that no tax shall be levied or collected except by authority of law cannot be disputed. This would clearly show that procedure for imposing liability to pay tax has to be strictly complied with.However, the aforesaid decisions cannot be pressed into service at this stage, as the, question whether provisions of law are complied with or not is yet to be decided by the court after a full-fledged hearing. While granting ex-parte interlocutory injunction, the learned Trial Judge again assumed that provisions of the Panchayats Act and 1964 Rules are not complied with. On the contrary, the presumption would be other way round. It will have to be decided after hearing both the parties and considering the facts and circumstances. Therefore, the aforesaid decisions are of no use at this stage.

Next reliance is placed on the decision in the case of Vinod Kumar vs. Surjit Kaur,AIR 1987 SC 2179. It is observed in para 9 thereof that the High court is justified in rejecting the finding of the Appellate Authority even though it is a finding of fact because the finding is based on conjectures and surmises and secondly, because they have lost sight of relevant pieces of evidence which have not been controverted.This principle is no longer in controversy. In fact, relying on such principle,the Appellate court has rightly quashed and set aside the ex-parte ad-interim injunction order dated 12.8.1996 passed below Ex.5 in the present suit.

Scope of Revision under Section 115 of Code.

It may also be remembered that the jurisdictional scope and ambit of revision under Section 115 of the Code is very much circumscribed.It is settled proposition of law that this court cannot,as a rule, interfere with the interlocutory order while exercising revisions powers under Section 115 of this nature, except under very exceptional circumstances. Needless to mention that this is not a case of that kind. The learned Appellate Judge in dealing with the appeal and quashing and setting aside the ex-parte interlocutory injunction order recorded by the learned Trial Judge has exercised equitable and discretionary powers under Order 39,Rules 1 and 2 read with Order 43,Rule 1(r) of the Code in the background of the factual scenario and the relevant principles of law governing law of interlocutory injunction and by no stretch of imagination, it can be said to be in any way perverse,unjust, inequitable or illegal requiring

interference of this court in revision under Section 115 of the Code.

It may be stated that the jurisdiction for the interference of the High court in proceeding under Section 115 of the Code is highly circumscribed and more so,after Amending Act,1976. Error of jurisdiction or manifest error of procedure affecting ultimate decision resulting in grave injustice can alone be set right in a proceeding in revision under Section 115. Section 115 ,as can be seen from the aforesaid provisions, applies to jurisdiction alone,irregular exercise or the non-exercise of it,or the illegal assumption of it. It cannot be directed against conclusion of law in which the question of proper finding of fact is involved or where no illegality is successfully spelt out.

In this connection, reference to a decision of the Supreme court in Hindustan Aeronautics vs. Ajit Prasad,AIR 1973 SC 76 may be made. In para 5 of the said decisioni, it has clearly observed that the High court has no jurisdiction to interfere with the order of the first appellate court.It is not the conclusion of the High court that the first appellate court had no jurisdiction to make the order that it made. The order of the first appellate court may be right or wrong.may be in accordance with law or may not be in accordance with law,but one thing is clear that it had jurisdiction to make that order. It is further observed that it is not the case that the first appellate court exercised its jurisdiction either illegally or with material irregularity. That being so,the High court could not have invoked its jurisdiction under section 115. Reliance is placed in that case on the decision of the Supreme court in Pandurang Dhoni vs. Maruti Hari Jadhav,AIR 1966 SC 153 and D.L.F.Housing and Construction Co.,(P)Ltd. vs. Sarup Singh,AIR 1971 SC 324..

It could very well be visualised from Section 115 that the High court cannot interfere while exercising powers under Section 115 where the case does not fall within the ambit of Section 115 of the Code.

The contention that recovery of octroi is by respondent No.2 as Ijaredar and,therefore, no public interest would suffer, is countenanced by the other side contending that Ijaredar is nothing but an agent of the Respondent panchayat and he was not impleaded when the impugned orders before the Trial court and before the Appellate court came to be passed. It would not be proper for this court to deal with this aspect of the matter first time

in Revision. It appears from the record that Respondent No.2 came to be impleaded as party in the suit subsequent to passing of the impugned order by the Appellate court.Again, in absence of terms and conditions of Ijara and particularly the payment schedule ,it would,not be appropriate for this court to deal with this contention. No doubt, it is borne out from the record that even Ijaredar has to pay seven and half percent to the Nagar panchayat and seven and half percent of the total ijara earning of octroi duty to the District panchayat. Since all the facts and circumstances are not placed on record in connection with contract/Ijara given to Respondent No.2 and since he was not party before the courts below at the time when the impugned orders came to be passed, it will be for the parties to agitate this point at appropriate stage and will be for the court concerned to deal with the same in light of the facts and circumstances and the relevant proposition of law.It is further clarified that it will be open for the petitioner company to move the Trial court for passing appropriate orders to safeguard refund of octroi duty even at the time of hearing of the interlocutory application Ex.5 on merits.

Learned advocate for the petitioner has also submitted that appropriate direction to safeguard refund of octroi which is being levied at present by the respondents in case of the plaintiff may be given by this court is not required to be considered in this revision for the simple reason that respondent No.2 Ijaredar who came to be impleaded in the suit later on, was not a party before the trial court as well as the appellate court when the impugned orders came to be passed. The terms and conditions and payment schedule of Ijaredar were not on record when the Trial court and the Appellate court passed the impugned orders. Therefore,this court is not inclined to entertain this contention in this revision. However, it is observed that the petitioner company may raise such contention before the Trial court at appropriate stage and it will be open for the Trial court to pass appropriate orders on merits in accordance with law.

IN THE RESULT,factually as well as legally,this court finds that this revision is totally meritless and,therefore, it is required to be rejected at the admission stage.

It may be mentioned before parting, that the learned advocate for the petitioner contended that some safeguards for refund of octroi may be provided till

hearing of Ex.5 application. This court is not inclined to pass at this stage any order restraining or circumspecting exercise of statutory power of recovering octroi duty. However,it would be appropriate and expedient to observe that hearing of the application,Ex.5 for interlocutory injunction may be expedited. The Trial court is,therefore,directed to accord priority and dispose of interlocutory injunction application Ex.5 in accordance with law as early as possible and preferably within a period of four weeks from the date of receipt of writ of this court,uninfluenced by the factual observations made at interim stage in the appeal and in this revision. In case, the matter is not heard within a reasonable time, it would be obviously open for the petitioner to move the Trial court for appropriate order to safeguard refund of octroi duty in case the petitioner company succeeds. Since the application,Ex.5 is yet not heard on merits after hearing the parties concerned,it would be proper and advisable to move the Trial court for appropriate direction while passing order on merits below Ex.5. With these observations, this court has no hesitation in dismissing this revision with costs which is quantified at Rs.2,000/- for each respondent. Notice is discharged.

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